IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JERMAINE GERRAD KNOWLES, Appellant.	No. 37867-1-II UNPUBLISHED OPINION

Hunt, J. — Jermaine G. Knowles appeals his second degree robbery jury conviction,[1] which arose from a domestic violence incident in which he hit and punched his estranged wife and grabbed her cell phone. He argues that the trial court erred in allowing a Clark County sheriff's deputy to testify about inadmissible speculative hearsay—that the victim said Knowles had taken her cell phone because he wanted to find out whom she had been calling. We affirm.

FACTS

Jermaine Knowles and his estranged wife, Brandy Neff, had been living separately for a few months when Neff returned home at about 2:30 am one night. As Neff walked up to her door, Knowles appeared, grabbed her cell phone, and hit her in the face when she tried to retrieve it. As she tried to get her door open, he hit her again, with a closed fist, splitting her lip and causing her nose to bleed. At that point, she ran to her neighbor's house. When she saw Knowles leave, she returned home.

Another neighbor, Meagan Matthieson, heard the fight and looked out her bedroom

[1] A commissioner of this court considered the matter under RAP 18.14 and referred it to a panel of judges.

window in time to see Knowles grab Neff's phone and hit her. Matthieson called 911. Sheriff's deputy James Payne arrested Knowles the next day. He told Payne that Neff had attacked him and that he had simply put up his hands to defend himself.

The State charged Knowles with second degree robbery and fourth degree assault, both alleged to be crimes of domestic violence. Knowles did not testify at trial. His defense counsel conceded the assault, but strenuously contested the robbery, asserting that Knowles had not taken anything from Neff. He pointed to Neff's testimony that later the same day of the incident, Neff had found her cell phone in her purse and had so advised the arresting officer.[2] The jury convicted Knowles as charged.

Knowles appeals only his second degree robbery conviction.

ANALYSIS

I. Hearsay

Knowles argues that the trial court abused its discretion in allowing Neff's hearsay statement about his reason for wanting the phone. He contends that this improper statement likely bolstered the State's doubtful case, thereby prejudicing him in the eyes of the jury. This argument fails.

Evidentiary decisions are within the trial court's discretion. We will not overturn such evidentiary decisions unless they are manifestly unreasonable or based on untenable grounds. *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). Such is not the case here.

At trial, the deputy prosecutor asked Clark County Sheriff's Deputy Jason Granneman,

[2] Knowles does not challenge the sufficiency of the evidence on appeal.

who had responded to the 911 call, whether Neff "gave any indication of why the cell phone was taken." Granneman responded, "She indicated to me that the suspect wanted to know who she was calling." The trial court overruled Knowles' objection that this testimony was hearsay and speculative.[3]

We can affirm the trial court on any ground. *State v. Norlin*, 134 Wn.2d 570, 951 P.2d 1131 (1998). Although Neff's statement to Granneman was hearsay, there was ample evidence of Neff's demeanor to justify treating it as an excited utterance exception to the hearsay rule under ER 803(2). Granneman testified that Neff was crying and hysterical when she spoke with him. Neff's door was still open and she was standing there, holding her face, which was bleeding.

III. Speculation

Knowles next argues that Neff's statement to Granneman was also inadmissible because it was mere speculation, not based on Neff's personal knowledge about why Knowles grabbed her cell phone. This argument presents a closer question because when the State subsequently asked Neff the same question it had asked had Granneman—about Knowles' reason for grabbing her cell phone, Neff responded that she did not know but could "speculate." And this time, the trial court sustained Knowles' objection. Clearly, this testimony was speculative. Thus, we must decide whether its admission was reversible error. We hold that error, if any, was harmless.

Knowles is correct that a witness may testify in terms that include inferences or conclusions only if the inferences and conclusions are based on personal knowledge. *See* ER 701; *State v. Wigley*, 5 Wn. App. 465, 468, 488 P.2d 766 (1971); *United States v. Guzzino,* 810 F.2d 687, 699 (7th Cir. 1987). Courts often refuse to let a witness testify about another person's state

[3] Notably, Knowles did not challenge any of Neff's other "hearsay" statements to the detective.

of mind.[4] Nevertheless, there is no absolute bar to such testimony, and reviewing courts give the trial court's decision much deference because the issues involved are "peculiarly suited" to determination by the trial judge. *Guzzino*, 810 F.2d at 699 (quoting *Bohannon v. Pegelow*, 652 F.2d 729, 732 (7th Cir. 1981)). Such is the case here.

Neff testified that she and Knowles had been talking about reconciling and that he had been showing signs of jealousy. When he had called earlier in the evening, she had told him she was going to bed and that she would not talk to him again until the next day. Instead, however, she went to a bar with friends. When she returned home, Knowles was there and he was "really, really angry." Her inference that he wanted her cell phone so that he could find out whom she had been calling was rationally based on what she knew about him, the nature of their estranged relationship, and the circumstances of the attack.[5] Thus, the trial court based its decision on tenable grounds and, therefore, was not an abuse of discretion.

But even assuming, without deciding, that it was error for the trial court to have allowed Granneman to testify about Neff's "speculative" statement, we further note that the statement

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[4] *See State v. Stockhammer*, 34 Wash. 262, 265, 75 Pac. 810 (1904) (court properly refused to permit defendant's wife to testify that the deceased had such a bitter feeling against her husband that he refused to write a check to her using her married name); *Guzzino*, 810 F.2d at 699 (court did not abuse its discretion in refusing to let a friend of the defendant testify regarding whether there was any reason why defendant would have wanted the victim shot); *United States v. Jackson*, 569 F.2d 1003, 1011, n.17, (7th Cir. 1978) (court properly refused to permit defendant's wife to testify as to why he was depressed at the time he assaulted a federal officer).

[5] *See Wigley*, 5 Wn. App. at 466, 468 (testimony by three officers that they believed defendant was serious when he made threats to harm his child was proper because they were acquainted with the defendant, and they had observed his behavior at the time of the incident); *see also John Hancock Mut. Life Ins. Co. v. Dutton*, 585 F.2d 1289, 1293-94 (5th Cir. 1978) (husband died during altercation with his wife, the witness's mother; the witness, who observed the altercation, was properly permitted to testify that she did not believe her stepfather thought her mother would shoot him).

about Knowles' reason for taking Neff's cell phone did not prejudice the defense. Neff and her neighbor Matthieson both testified that Knowles took Neff's cell phone. Matthieson, a neutral witness, had witnessed the altercation outside Neff's home and was absolutely certain that Knowles had taken the phone; in fact, Matthieson testified that she could see the cell phone's light.

This eyewitness testimony about Knowles' having taken Neff's cell phone from her was uncontroverted. Thus, Neff's speculative testimony about Knowles' motive did not likely affect the jury's verdict.[6] We hold, therefore, that any error was harmless. *See State v. Farr-Lenzini*, 93 Wn. App. 453, 465, 970 P.2d 313 (1999) (constitutional error is harmless if it did not contribute to the verdict).

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Houghton, P.J.

Bridgewater, J.

[6] Furthermore, Knowles' motive for taking Neff's cell phone was not important. At most, it suggested why he might have returned the phone to Neff after taking it. Knowles' motive for taking the phone was not at all probative as to whether he *could* have returned it, the primary focus of the defense.